

MEMORANDUM OF AGREEMENT
BETWEEN
THE GEORGIA PORTS AUTHORITY
AND
THE DEPARTMENT OF THE ARMY

ARTICLE I - PURPOSE AND AUTHORITY

This Memorandum of Agreement ("**MOA**") is entered into by and between the U.S. Department of the Army ("**DA**"), and the Georgia Ports Authority, ("**GPA**"), ("**the parties**"), for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the provision of DA technical services being conducted leading to the completion of the Congressionally mandated environmental resolution of the Savannah Harbor Expansion Project ("**PROJECT**"), authorized by Public Law 106-53, the Water Resources Development Act of 1999. This MOA is entered into pursuant to Section 204(b) of Public Law 99-662, the Water Resources Development Act of 1986 (33 U.S.C. 2232(b)).

The GPA and the DA understand that entering into this MOA in no way obligates either party to implement the PROJECT.

ARTICLE II - SCOPE

Goods and services which the DA may provide under this MOA include studies and planning activities, engineering and design (including plans and specifications), construction management assistance and training. Construction management assistance is limited to technical advice to improve State and local management capability in contract preparation, negotiation and **evaluation**; contract administration; quality assurance; and such other related goods or services as may be agreed upon in the future.

In the DA's performance of work for the **GPA**, the provisions of ER 1140-1-211 shall be followed. The DA agrees to promptly provide to the GPA complete copies of ER 1140-1-211 and all other documents referred to therein, and promptly provide to the GPA all subsequent modifications or additions to and ER 1140-1-211, and all documents referred to therein.

Nothing in this **MOA** shall be construed to require the GPA to use the DA or to require the DA to provide **any** goods or services

to the GPA, except as may be set forth in Work Orders for specific, discrete tasks as generally defined in this MOA.

ARTICLE III - INTERGOVERNMENTAL COMMUNICATIONS

To provide for consistent and effective communication between the DA and the GPA, each party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. Additional representatives may also be appointed to serve as points of contact on particular WOs.

ARTICLE IV - WORK ORDERS

In response to requests from the Port for DA assistance under this MOA, the DA and the GPA shall seek to conclude mutually agreed upon written WOs, which shall include the following:

- a detailed scope of work statement;
- schedules;
- funding arrangements, including whether payment shall be in advance or by reimbursement;
- the amount of funds required and available to accomplish the scope of work as stated above; and
- the GPA's fund citation and the date upon which the cited funds expire for obligation purposes;

The following must be addressed in each WO or in this MOA as applicable:

- identification of individual project managers;
- identification of types of contracts to be used (if known);
- types and frequencies of reports;
- identification of which party is to be responsible for government-furnished equipment and contract audits;
- procedures for amending or modifying the WO; and
- such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested goods and services.

Goods or services shall be provided under this MOA only after an appropriate WO has been signed by authorized representatives of the GPA and the DA after "technical" approval of the designated DA and GPA Principal Representatives required to execute that WO. Upon signature of the parties defined in the previous sentence, a WO shall constitute a valid

Intergovernmental Cooperation Act order. In the case of conflict between this MOA and a WO, this MOA shall control.

ARTICLE V - RESPONSIBILITIES OF THE PARTIES

A. Responsibilities of the Department of the Army

The DA shall provide the GPA with goods or services in accordance with the purpose, terms, and conditions of this MOA and with specific requirements set forth in WOs and implementing arrangements.

The DA shall identify DA representatives authorized to sign WOs.

The DA shall use its best efforts to provide goods or services either by contract or by in-house effort.

The DA shall provide detailed periodic progress, financial and other reports to the GPA as agreed to in the WO. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures.

The DA shall inform the GPA of all DA contracts entered into under each WO.

B. Responsibilities of the GPA

The GPA shall certify, prior to the execution of each WO under this MOA that the WO complies with the requirements of the Intergovernmental Cooperation Act.

The GPA shall pay all costs associated with the DA's provisions of goods or services under this MOA and shall certify, at the time of signature of a WO, the availability of funds necessary to accomplish that WO.

The GPA shall ensure that only authorized GPA officials sign WOs.

The GPA, in cooperation with the DA, shall develop draft WOs to include scope of work statements.

ARTICLE VI - FUNDING

The GPA shall pay costs associated with the DA's provision of goods or services under this MOA. The GPA shall provide the DA the full amount of funds estimated for each WO under this MOA to cover the above obligations by delivering a check payable to "FAO, USAED, Savannah" to the District Engineer or his representative.

If the DA forecasts its actual costs under a WO to exceed the amount of funds available under that WO, it shall promptly notify the GPA of the amount of the additional funds necessary to complete the work under that WO. The GPA shall either provide the additional funds to the DA, or require that the scope of work be limited to that which can be paid for by the then available funds, or direct termination of the work under that WO.

Within 90 days of completion of the work under a WO, the DA shall conduct an accounting to determine the actual cost of the work. Within 30 days of completion of this accounting, the DA shall return to the GPA any funds advanced in excess of the actual costs as then known, or the GPA shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the GPA's duty in accordance with Article X to pay for any costs, such as contract claims or other liability, which may become known after the final accounting.

ARTICLE VII - APPLICABLE LAWS

This MOA and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States. Unless otherwise required by law, all contract work undertaken by the DA shall be governed by DA policies and procedures.

ARTICLE VIII - CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded by the DA shall be resolved in accordance with Federal law and the terms of the individual contract. The DA shall have dispute resolution authority for these claims. Any contracting officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. Section 601-613). The U.S. Army Corps of

Engineers Board of Contract Appeals (" ENG BCA") is designated as the appropriate board of contract appeals. In lieu of appealing to the ENG BCA, the contractor may bring an action directly to the United States Court of Federal Claims.

The DA shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. The DA shall notify the GPA of any such litigation and afford the GPA an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.

ARTICLE IX - DISPUTE RESOLUTION

The parties agree that, in the event of a dispute between the parties, the GPA and the DA shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. The parties agree that, in the event such measures fail to resolve the dispute, they may seek such lawful remedies as may be available.

ARTICLE X - LIABILITY

If liability of any kind is imposed on the United States Government relating to the DA's provision of goods or services under this MOA, the DA will accept accountability for its actions, but the GPA shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability, and all related costs.

ARTICLE XI - PUBLIC INFORMATION

Justification and explanation of the GPA's programs before other agencies, departments, and offices shall be the responsibility of the GPA. The DA may provide, upon request, any assistance necessary to support the GPA's justification or explanations of the GPA's programs conducted under this MOA. In general, the GPA is responsible for all public information. The DA and GPA may make public announcements but the DA will respond to all inquiries relating to the ordinary procurement and contract award and administration process applicable to DA contracts arising out of an approved WO. The GPA or the DA shall make its best effort to give the other party advance notice

before making any public statement regarding work contemplated, undertaken, or completed pursuant to WOs under this MOA.

ARTICLE XII - MISCELLANEOUS

A. Other Relationships or Obligations

This MOA shall not affect any pre-existing or independent relationships or obligations between the GPA and the DA.

B. Survival

The provisions of this MOA which require performance after the expiration or termination of this MOA shall remain in force notwithstanding the expiration or termination of this MOA.

C. Severability

If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

ARTICLE XIII - AMENDMENT, MODIFICATION AND TERMINATION

This MOA may be modified or amended only by written, mutual agreement of the parties. Either party may at any time terminate this MOA without cause by providing written notice to the other party. The termination shall be effective upon the thirtieth calendar day following notice, unless a later date is set forth. In the event of termination, the GPA shall continue to be responsible for all costs incurred by the DA under this MOA and for the costs of closing out or transferring any on-going contracts. This MOA may also be terminated by mutual written agreement.

ARTICLE XV - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under the MOA shall be deemed to have been duly given in writing if either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the GPA:

Executive Director
Georgia Ports Authority
P.O. Box 2406
Savannah, Georgia 31402

If to the DA:

Department of the Army
Savannah District, Corps of Engineers, Att'n: PM-C
100 W. Oglethorpe Avenue
P.O. Box 889
Savannah, Georgia 31402-0889

B. A party may change the address or person to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communications made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

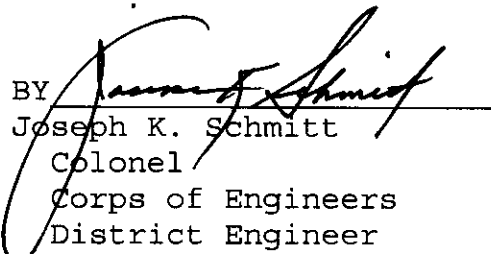
ARTICLE XVI - EFFECTIVE DATE

This MOA shall become effective when signed by both the GPA and the DA.

THE GEORGIA PORTS AUTHORITY

DEPARTMENT OF THE ARMY

BY 
Doug J. Marchand
Executive Director
Georgia Ports Authority

BY 
Joseph K. Schmitt
Colonel
Corps of Engineers
District Engineer

Date: 4/5/00

Date: 13 April 2000